CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

1000 FRIENDS OF WASHINGTON, *et al*., and JERRY HARLESS, *pro se,*	)	**CPSGMHB Case No. 04-3-0031c**
	)	***[1000 Friends/KCRP]***
Petitioners,	)	
v.	)	
KITSAP COUNTY,	)	
Respondent, and	)	**FINAL DECISION AND ORDER**
RICHARD BJARNSON,	)	
Intervenor, and	)	
OVERTON & ASSOCIATES, *et al.*,	)	
Amici Curiae	)	

SYNOPSIS

*Petitioners 1000 Friends of Washington and Kitsap Citizens for Responsible Planning (together **Futurewise**[1]) and pro se Petitioner Jerry Harless (**Harless**) challenged Kitsap County's adoption of Ordinance No. 326-2004, amending the Comprehensive Plan, and Resolution No. 158-2004, providing an addendum to the 2002 Buildable Lands Analysis Report (**BLR**) for "reasonable measures." Harless also challenged Kitsap County for failure to act to conduct the review of Urban Growth area designations and densities required by RCW 36.70A.130(3).*

*By Ordinance No. 326-2004, Kitsap County designated George's Corner as a Limited Area of More Intensive Rural Development (**LAMIRD**) under RCW 36.70A.070(5)(d).*

[1] Because 1000 Friends of Washington has changed its name to Futurewise, the name Futurewise is used throughout this decision to refer to these Petitioners.

Futurewise did not challenge the designation, but objected to the "logical outer boundary" established for the area and contended that Kitsap County had failed to adopt measures to minimize and contain the commercial area. The Board found that the Petitioners ***had not met their burden*** *of proof and* ***dismissed*** *this issue.*

By Resolution No. 158-2004, Kitsap County adopted a list of "reasonable measures" already implemented by the County to increase densities in urban areas. The Resolution further committed Kitsap County to consideration of additional measures already outlined by County staff. The Board concurred with Kitsap County that this action constituted threshold compliance with RCW 36.70A.215, particularly in light of the requirement for annual monitoring of these measures and their efficacy.[2] *The Board concluded that Petitioners* ***had not met their burden*** *of proof and* ***dismissed*** *these issues.*

*Ordinance No. 326-2004 constituted both an annual amendment to the Kitsap County Comprehensive Plan allowed under RCW 36.70A.130(2) and the periodic Plan "update" or "compliance review" required by RCW 36.70A.130(1) and (4). Petitioner Harless challenged Kitsap County's failure to act to conduct the review of urban growth area (****UGA****) designations and densities required by RCW 36.70A.130(3). Kitsap County disputed the deadline. The Board reviewed the legislative history of the relevant statutory timelines and found that Kitsap County* ***failed to act*** *within the required ten years when it did not review its UGA designations and densities by December 1, 2004. The Board entered an* ***order of non-compliance – failure to act -*** *and established a compliance schedule.*

I. BACKGROUND[3]

On October 25, 2004, Kitsap County adopted Ordinance No. 326-2004, amending the Comprehensive Plan, and Resolution No. 158-2004, providing an addendum to the 2002 buildable lands analysis report. Notice of adoption was published on October 30, 2004.

On December 28, 2004, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from 1000 Friends of Washington and Kitsap Citizens for Responsible Planning (**Petitioners** or **Futurewise**). The matter was assigned Case No. 04-3-0030, and is hereafter referred to as *1000 Friends/KCRP*, while these petitioners are referred to as Futurewise. The Futurewise PFR challenges Kitsap County's (**Respondent** or the **County**) adoption of Ordinance No. 326-2004 and Resolution No. 158-2004 as noncompliant with various provisions of the Growth Management Act (**GMA** or **Act**).

On December 30, 2004, the Board received a PFR from Jerry Harless, (**Petitioner** or **Harless**). The matter was assigned Case No. 04-3-0031. Harless challenges the County's adoption of Ordinance No. 326-2004. Harless also challenges the County's

[2] RCW 36.70A.125(4)

[3] See Appendix A for the complete procedural history in this matter.

failure to act to adopt "reasonable measures" and to review and revise its urban growth areas (**UGAs**).

Prehearing Conference and Consolidation

In January, 2005, the Board received notices of appearance on behalf of the various parties, issued a Notice of Hearing and Potential Consolidation (Jan. 5, 2005), and received the County's Preliminary Index to the Record. The Board conducted the Prehearing Conference on January 31, 2005 and issued a Prehearing Order and Order of Consolidation (**PHO**) (Feb. 1, 2005) consolidating the PFRs as **CPSGMHB Consolidated Case No. 04-3-0031c**, hereafter referred to as *1000 Friends/KCRP v. Kitsap County*. The Prehearing Order set forth the legal issues to be decided as Legal Issues 1-4, submitted in the 1000 Friends/KCRP PFR, and Legal Issues 5-8, submitted in the Harless PFR. Both the schedule and the legal issues were modified during the subsequent motions practice.

Motions

Motion to Supplement. Petitioner Harless submitted a Motion to Supplement the Record (Feb. 15, 2005) with nine attachments. Kitsap County filed a response (Feb. 28, 2005) and Harless filed a rebuttal (March 7, 2005). The Board's March 15, 2005, Order on Motions, at 8, allowed supplementation of the record with three of the documents requested by Harless. (Attachments D, E, and F, now **Supp. Ex. Nos. 1, 2, and 3.)**

Amicus Motion. On February 17, 2005, the Board received a Motion to Appear as *Amici Curiae* from Overton & Associates, Alpine Evergreen Company, Inc., and Olympic Property Group (**Overton** or **Amicus**) requesting permission to brief the question whether GMA Section 215(4) limits "reasonable measures" to requirements for urban lands. Without objection from any party, the motion was granted in the Board's Order on Motions (March 15, 2005).

Motion to Dismiss Harless – Timeliness. On February 17, 2005, the Board received "Kitsap County's Motion to Dismiss Legal Issues 5, 7 and 8", accompanied by an Affidavit of Publication affirming the publication of notice of adoption of Ordinance 326-2004 on October 30, 2004. Legal Issues 5, 7 and 8, submitted in the Harless PFR, challenge Ordinance 326-2004. Kitsap's Motion to Dismiss was based on the untimely filing of the Harless PFR, which was filed December 30, 2004, on the 61st day after publication. Harless did not contest the County's motion.

On its own motion, the Board considered whether Harless' Legal Issue No. 6, concerning "reasonable measures" and review of the County's UGAs, was also time-barred. The Board issued its Order to Supplement the Record (Feb. 24, 2005), requiring Kitsap County to submit an affidavit of publication of Resolution No. 158-2004, which concerned "reasonable measures". The County's response indicated that notice of adoption of Resolution 158-2004 was not separately published, but the resolution was incorporated by reference in the notice of adoption of Ordinance 326-2004.

On March 15, 2005, the Board issued its Order on Motions, Dismissing Harless Petition, Ruling on Supplementation and Granting Amicus (**Order on Motions**). The Order on Motions granted Kitsap County's Motion to Dismiss Harless Legal Issues 5, 7 and 8 as untimely. The Order further dismissed Legal Issue 6 on the ground that, though posited as a "failure to act" challenge, Legal Issue 6 in fact asserts the non-compliance of various County actions with GMA requirements, and as to those actions, the challenge is untimely or otherwise barred.

Petitioner Harless submitted a timely Request for Reconsideration and Motion to Intervene, requesting reconsideration of the Board's order dismissing Legal Issue 6 and, alternatively, requesting status as an intervenor with regard to Legal Issues 2, 3 and 4 as petitioned by Futurewise. By order dated March 21, 2005, the Board granted intervention and shortened time to respond to the motion for reconsideration, receiving Kitsap's response on March 28, 2005.

On March 31, 2005, the Board issued its Order on Reconsideration, reinstating Harless' PFR as to the UGA component of Legal Issue No. 6 and revising the briefing schedule for that issue. The Board determined that RCW 36.70A.130(3) requires Kitsap County to review and revise its UGAs by December 1, 2004, and Kitsap acknowledges it has not done so; therefore Harless' failure-to-act challenge is timely.

Intervention. On April 5, 2005, the Board received a Motion to Intervene by Richard Bjarnson, a property owner in the area affected by Legal Issue No. 1. Without objection from any party, the motion was granted in the Board's April 12, 2005, Order on Intervention, which limited Bjarnson's participation to support of Kitsap County on Legal Issue No. 1.

Briefing and Hearing on the Merits

Prehearing briefing was timely filed as follows:

- Futurewise's and Kitsap Citizens for Responsible Planning's Prehearing Brief (**Futurewise PHB**)
- Intervenor Harless' Prehearing Brief [Legal Issues 2, 3 and 4] (**Harless PHB 2,3,4)**
- Respondent's Prehearing Brief (**County Response**)
- Respondent [Intervenor] Bjarnson's Prehearing Brief (**Bjarnson**).
- Prehearing Brief of *Amici Curiae* Overton, et al., (**Overton**).
- Intervenor Harless' Reply Brief of Issues 2, 3 and 4 (**Harless Reply 2,3,4**).
- Futurewise and KCRP's Prehearing Reply Brief (**Futurewise Reply)**.
- Petitioner Harless' Prehearing Brief of Legal Issue No.6 (**Harless PHB 6**).
- Kitsap County's Prehearing Brief Concerning Issue No. 6 (**County Response 6**).
- Intervenor [sic] Harless' Reply Brief Regarding Issue 6 (**Harless Reply 6**).

The Board conducted the Hearing on the Merits at the Board's offices on May 2, 2005. Board members Margaret A. Pageler, presiding officer, Bruce C. Laing, and Edward G McGuire were present for the Board. Petitioners Futurewise and Kitsap Citizens for

Responsible Planning were represented by John Zilavy, accompanied by co-counsel Simi Jain, and KCRP members Charlie Burrow and Tom Donnelly. Petitioner-Intervenor Jerry Harless appeared *pro se*. Respondent Kitsap County was represented by Kitsap County Deputy Prosecutor Shelley Kneip, accompanied by Lisa Nickel and Angie Silva. Intervenor Bjarnson was represented by Bill Broughton and *Amicus* Overton was represented by Elaine Spencer. Katie Askew of Byers & Anderson, Inc. provided court reporting services. The Board subsequently ordered a transcript of the HOM which was received on June 8, 2005, and is cited herein as **HOM.**

The Board's Final Decision and Order was issued on June 28, 2005.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Petitioners challenge Kitsap County's adoption of Ordinance No. 326-2004, amending the Comprehensive Plan and Map for 2004 and amending the Kitsap County Zoning Code and Map, and Resolution No. 158-2004, Providing an Addendum to the Buildable Lands Report for Reasonable Measures. Pursuant to RCW 36.70A.320(1), County Ordinance No. 326-2004 and Resolution No. 158-2004 are presumed valid upon adoption.

The burden is on Petitioners, Futurewise, Kitsap Citizens for Responsible Planning and Jerry Harless, to demonstrate that the actions taken by the County are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by the county is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Kitsap County's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.3201 the Board will grant deference to Kitsap County in how it plans for growth, consistent with the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA … cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, __ Wn2d __, 110 P.3d 1132, 2005 WL 1037145 (May 5, 2005), at 10. The *Quadrant* decision affirms prior State Supreme Court rulings that "Local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.3d 133 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county's plan that is not 'consistent with the requirements and goals of the GMA.'"

Cooper Point Association v. Thurston County, 108 Wn.App. 429, 444, 31 P.3rd 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3rd1156 (2002) and cited with approval in *Quadrant, supra,* fn. 7, at 5.

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review. RCW 36.70A.290. This Final Decision and Order does not extend to unchallenged elements of Kitsap County's ordinance or plan, which are presumed valid as a matter of law.

III. BOARD JURISDICTION, PRELIMINARY MATTERS AND PREFATORY NOTE

A. BOARD JURISDICTION

The Board finds that the PFR filed by Petitioners Futurewise and Kitsap Citizens for Responsible Planning was timely filed, pursuant to RCW 36.70A.290. The PFR filed by Petitioner Jerry Harless was untimely with respect to challenges to Ordinance No. 326-2004 and Resolution No.158-2004, but timely with respect to the challenge contained in Legal Issue 6 of "failure to act" to review the County's urban growth areas.

Petitioners Futurewise, Kitsap Citizens for Responsible Planning and Jerry Harless have standing to appear before the Board, pursuant to RCW 36.70A.280(2), and Richard Bjarnson may appear as an intervenor, pursuant to WAC 242-02-270. Pursuant to WAC 242-02-280, Overton & Associates, *et al*., are granted *amicus* status and may provide briefing *amici curiae* with respect to Legal Issue Nos. 2 and 3, to the extent these issues may implicate "appropriate planning and development regulations for the rural area." Order on Motions (March 15, 2005), at 8.

Pursuant to RCW 36.70A.280(1)(a), the Board has subject matter jurisdiction over the challenged ordinance and resolution, which amend Kitsap County's comprehensive plan and provide an appendix to its buildable lands report.

B. PRELIMINARY MATTERS

At the outset of the Hearing on the Merits, the Presiding Officer indicated that the Board would defer to the written decision and order (FDO) its rulings as to admission of exhibits submitted with the briefs that were not previously identified as part of the record or by Motion to Supplement the Record.

- Harless PHB attaches Ordinance No. 93-1983, the Kitsap County 1983 Zoning Code. The Board takes official notice of this County ordinance pursuant to WAC 242-02-660(4).

- County Response attaches Exhibit A, a Court of Appeals decision concerning post-1990 development at George's Corner. The Board takes official notice of Washington court decisions pursuant to WAC 242-02-660(2).

- County Response attaches Exhibits B and E, sections of the Kitsap County zoning code, and Exhibit D, excerpts from adopted sub-area plans [Index 25559]. The Board takes official notice of County enactments pursuant to WAC 242-02-660(4).

- County Response attaches Exhibit C, the CTED Buildable Lands Program Guidelines, which was omitted from the County Index. County Response, at 17. County Response 6 attaches Exhibit A, a CTED document titled "Frequently Asked Questions Regarding GMA Updates," stating that the County relied on this guidance in its actions herein. The Board finds that **these guidelines are not agency rules or adopted standards** that may be noticed by the Board pursuant to WAC 242-02-660(2). However, the Board will admit the guidelines: they were apparently in the record before the County, have not been objected to by any party, and may be of assistance to the Board in its deliberations on the issues in this case. RCW 36.70A.290(4).

At the Hearing on the Merits both Futurewise and Kitsap County made use of an enlarged colored copy of Map 2, Index No. 24122, which Respondent supplied for illustrative purposes. As the map was merely a duplicate of material in the record, the presiding officer did not mark it as an exhibit.

On May 4, 2005, the Board received, by memorandum from Shelley Kneip, Kitsap County's response to information requested by the Board at the Hearing on the Merits regarding the zoning requirements for park-and-ride lots. The memorandum also attached a supplement to County Response, Exhibit B, consisting of relevant portions of the Kitsap County zoning code inadvertently omitted in the County Response.

On May 13, 2005, the Board received Kitsap County's Statement of Additional Authority with an attached copy of the Supreme Court's decision in *Quadrant Corp. v. CPSGMHB*, ___Wn2d ___, 110 P.3d 1132, 2005 WL 1037145 (May 5, 2005). On May 16, 2005, the Board received Harless' Response to County Statement of Additional Authority. Pursuant to WAC 242-02-660(2), the Board takes official notice of judicial decisions of the state courts.

C. PREFATORY NOTE

These consolidated cases involve three sets of issues, each with its particular grouping of parties. This Final Decision and Order addresses the issues in the order set forth below. Each section sets forth the action being challenged, the positions of the parties, and the Board's conclusions.

- Legal Issue No. l concerns George's Corner LAMIRD [Limited Area of More Intensive Rural Development], designated in Ordinance No. 326-2004. The

parties to this issue are Petitioners Futurewise, Respondent Kitsap County, and Bjarnson as Intervenor on the side of the County.

- Legal Issue Nos. 2 and 3 concern "reasonable measures" and challenge Resolution No.158-2004. The parties to this issue are Petitioners Futurewise, Harless as Intervenor on the side of Futurewise, and Respondent Kitsap County. *Amicus* Overton provides a brief urging the Board to support the County's action.
- Legal Issue No. 6,[4] as revised in the Order on Reconsideration (March 31, 2005), challenges Kitsap County's failure to act to review and update its UGA designations by December 1, 2004. The parties to this issue are Petitioner Harless and Respondent Kitsap County.
- Legal Issue No. 4 asks the Board to invalidate Ordinance No. 326-2004 and Resolution No. 158-2004. This request for invalidity is discussed last.

IV. LEGAL ISSUES AND DISCUSSION

A. LEGAL ISSUE NO. 1

Legal Issue No. 1.

> *Does adoption of Ordinance 326-2004, establishing the George's Corner LAMIRD, fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(2) and RCW36.70A.070(5) when the LAMIRD contains predominantly land that was undeveloped in 1990, is not circumscribed by a logical outer boundary, fails to include measures to minimize and contain existing areas of more intense development and otherwise fails to comply with GMA LAMIRD requirements?*

The Challenged Action and the Parties

The County's 2004 Comprehensive Plan revision, Ordinance No. 326-2004, designated the crossroads known as George's Corner as a Limited Area of More Intensive Rural Development (**LAMIRD**). George's Corner is located 1.5 miles from Kingston at the intersection of Hansville Road and State Route 104. Index 26999, at 2. These two arterials provide primary accessibility to the entire North Kitsap Region – Kingston, Hansville, Port Gamble, Indianola, the Hood Canal Bridge, and the Kingston Ferry terminal. Index 24122, at 7. Historically the southwest corner of this crossroads has contained a gas station/convenience store serving the local area and the traveling public. Index 26999, at 2. Prior to the adoption of the 1994 Kitsap County Comprehensive Plan, the other three corners were designated as rural residential. In the late 1980's an Unclassified Use Permit was issued that allowed a small industrial park to be developed

[4] The Board **dismissed** Petitioner Harless' Legal Issue Nos. 5, 6, 7, and 8 as untimely in its Order on Motions (March 15, 2005) and subsequently **reinstated and restated** Legal Issue No. 6 in its Order on Reconsideration (March 31, 2005).

in the northeast quadrant one lot removed from the corner. In the early 1990s, additional rezones allowed a large-scale supermarket (Albertson's), bank, video rental store and other businesses to be constructed at the northeast corner. In 1994, all four corners were zoned Commercial, but with the invalidation of the 1994 Kitsap County Comprehensive Plan, the zoning for the vacant parcels was removed. Only two parcels with existing vested commercial developments were recognized in the 1998 Comprehensive Plan. *Id.*

Designation of the George's Corner LAMIRD was proposed in the 1998 Kitsap County Comprehensive Rural Appendix Issue Paper (at p. A-294). In 2003, County staff prepared a staff report [Index 24122] further analyzing the George's Corner intersection. The staff made findings identifying the pre-1990 built environment as consisting of the gas station/minimart and the three non-residential buildings in the strip adjacent to Albertson's. The staff found that the Albertson's site "was constructed after the 1990 cutoff date and therefore can't be used as justification for determining the LOB [logical outer boundary.] However, it can be viewed as infill development between the two existing developed parcels noted above." Index 24122, at 7.

The staff suggested using the natural contours of the land to define and limit the LAMIRD. "The non-built or natural environment can provide useful assistance in delineating a LOB." Index 24122, at 7. "This intersection area is considered a plateau region, with delineated drainage basins and headwaters for Grover's Creek (ESA listed stream) and Gamble Creek located on the east and west respectively. These areas can easily be depicted on the CAO [critical areas ordinance] map and include identifiable features such as wetlands, hydric soils, open water and forest cover (aerial photos)." Index 24122, at 4. The staff report concludes with two options: a LAMIRD recognizing only pre-1990 development, or a LAMIRD recognizing both pre-1990 and post-1990 "infill" development, with natural features providing additional delimitation. Index 24122, at 10. The staff report provides this caveat: "These recommendations can be viewed as a calculated risk, because the overall intent of the 1997 amendment to GMA allowing the designation of LAMIRDs was to recognize historical (pre-GMA) developments that were not considered rural in nature. However, the County can't undo what has already taken place, [i.e., the Albertson's development], but can utilize the guidelines established under the Growth Management Act to minimize the future impacts to the rural areas of Kitsap County." Index 24122, at 9.

Ordinance No. 326-2004 designates George's Corner as a Limited Area of More Intensive Rural Development. All four corners of the intersection are included and are now zoned Neighborhood Commercial. The "logical outer boundary" (**LOB**) is defined by the topography of the area. A boundary line adjustment to the Bjarnson property, conformed to the topography, was required by the County to contain the size of the LAMIRD. Neighborhood Commercial development standards will not allow new construction at the scale of the present Albertson's. Ordinance No. 326-2004, at 8.

The status of the four corners of the crossroads is as follows:

- Southwest corner. The gas station/minimart, with permits and historic commercial zoning, predates 1990. Also predating 1990 was a tackle shop on the Hansen property just south of the minimart. County Response, Index 27041.

- Northeast corner. The pre-1990 development in this quadrant consists of small manufacturing and storage buildings on three parcels that are not located at the corner, do not abut the highway, and are accessed from a separate road to the highway. Futurewise Reply, at 3. The primary development here is the post-1990 bank, video rental store and large suburban grocery store. The north lot of the LAMIRD is a Kitsap Transit park-and-ride lot. HOM, at 15-16.

- Southeast corner. An amendment approved in the 2001 Comprehensive Plan Amendment Process changed the Plan and zoning designations of the southeast corner [North Sound Bank property] from Rural Residential to Neighborhood Commercial at the request of a local bank. Index 26999, at 2. This property is vacant, Futurewise Reply, at 3, but a conditional use permit has been applied for to build a drugstore. HOM, at 16.

- Northwest corner. Approximately 13.5 acres of vacant property at the northwest corner of the intersection is owned by Richard Bjarnson who applied for commercial zoning in 2003. The County required a boundary line adjustment dividing the property, recognizing wetlands that bisect the land, and rezoning 5.8 acres as Neighborhood Commercial. Index 26999, at 2; Ordinance 326-2004, at 9.

The George's Corner LAMIRD provisions of Ordinance 326-2004 are challenged by Futurewise and Kitsap Citizens for Responsible Planning.[5] Petitioners do not object to designation of a LAMIRD at this location but argue that the "logical outer boundary" (LOB) drawn by the County does not comply with GMA requirements and that the County has not taken the required actions to "minimize and contain" development. Property owner Richard Bjarnson intervened in support of the County's action.

Applicable Law

RCW 36.70A.070(5)(d), added to the GMA in 1997, allows Counties to recognize small pockets of more intensive pre-GMA development in rural areas. The LAMIRD at issue in this case is a Type I LAMIRD (i.e., RCW 36.70A.070(5)(d)(i)).

> (d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

[5] Harless is neither a petitioner nor an intervenor with respect to the George's Corner issue. The Overton *amicus* does not go to this issue.

(i) Rural development consisting of the *infill, development, or redevelopment of existing* commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or *crossroads developments*.

> (A) A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.
>
> (B) Any development or redevelopment . . . must be principally designed to serve the existing and projected rural population.
>
> (C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);[6]
>
> . . . .

(iv) A county shall adopt *measures to minimize and contain the existing areas or uses of more intensive rural development*, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are *clearly identifiable and contained* and where there is a logical *boundary delineated predominately by the built environment*, but that *may also include undeveloped lands if limited* as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address

> (A) the need to preserve the character of existing natural neighborhoods and communities,
>
> (B) *physical boundaries such as* bodies of water, streets and highways, and *land forms and contours*,
>
> (C) the prevention of abnormally irregular boundaries, and

[6] The second sentence of (C) was added in a legislative amendment in 2004. Laws of 2004, ch. 196.

> (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;
>
> (v) For purposes of (d) of this subsection, *an existing area or existing use is one that was in existence: (A) On July 1, 1990 . . . .*

Emphasis supplied.

Discussion and Analysis

Positions of the Parties

Petitioners (here Futurewise and KCRP) contend that, while George's Corner is an example of rural crossroads development that may appropriately be designated as a Limited Area of More Intensive Rural Development, the County has failed to comply with the GMA LAMIRD requirements in two respects. The Petitioners claim, first, that the LAMIRD is not contained within a *logical outer boundary* delineated predominantly by the 1990 built environment, and second, that the County hasn't adopted measures to *minimize and contain* future more-intensive development.

Petitioners assert that the statutory standard for a LAMIRD logical outer boundary **(LOB)** is that it must be "delineated predominantly by the [1990] built environment." RCW 36.70A.070(5)(d). Petitioners note that in 1990 only the southwest corner of the intersection and a strip of three small parcels some distance removed from the northeast corner contained commercial development. In fact, "only one of these parcels existing in 1990 is on the corner of the George's Corner intersection." Futurewise Reply at 3.

Petitioners contend that the 1997 amendment to GMA that allowed designation of LAMIRDs was designed to provide grandfathering of pre-GMA rural industrial nodes and neighborhood services, not to set up *new commercial areas* in competition with urban centers.[7] Therefore, Petitioners assert, the specific legislative identification of the 1990 "built environment" as the basis for delimiting the logical outer boundary of a LAMIRD precludes the County from using the post-1990 Albertson's complex as a factor in defining this area. Futurewise PHB, at 8.

Petitioners further contend that adding two large vacant parcels to the proposed LAMIRD on the southeast and northwest corners means the node will no longer be "delineated predominantly by the [pre-1990] built environment," as required by .070(5)(d)(iv). Futurewise PHB, at 10-11. These undeveloped lots – Bjarnson's 5 acres and North Sound Bank's 4 acres - go beyond what may be legitimately characterized as infill, according to Petitioners. *Id.*

[7] Commercial development at George's Corner has been a concern to the Kingston Steering Committee and local residents because of its competition with businesses in downtown Kingston. Index 26999, at 2.

Petitioners also object to the expansive George's Corner LAMIRD designated by the County because it is not "principally designed to serve the existing and projected rural population" as required by .070(5)(d)(1)(B). They contend that the County has not enacted regulations to ensure that "any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the [pre-1990] existing uses" as required by .070(5)(d)(i)(C). Futurewise PHB, at 12-13.

Kitsap County responds that George's Corner LAMIRD is GMA-compliant, having first been identified by the County as a possible LAMIRD in a 1998 Rural Issue Paper Appendix to the Kitsap County Comprehensive Plan. Index #20539. As of 2002, two of the four corners of the intersection had commercial development, and a third (North Sound Bank) was zoned Commercial. Index #24412, Attachment 3, Map "George's Corner 2002 Comprehensive Plan Designations." The Board of County Commissioners considered a LAMIRD designation for the intersection in 2003, but deferred the matter for a study of the logical outer boundary and for appropriate staff and public review. Ordinance 311-2003 ,at 8 (Core Document).

The County recites the extensive staff study and public review that ensued (County Response, at 6), and states that the LAMIRD boundary decision was the result of "appropriate and reasoned consideration." *Id*. While Futurewise relies largely on the requirement that LAMIRDs must be "delineated predominantly by the built environment," Kitsap points out that the *next phrase* of the statute reads: "but that may also include undeveloped lands if limited as provided in this subsection." RCW 36.70A.070(5)(d)(iv).

Kitsap points to this Board's acknowledgement of infill development in *Bremerton, et al., v. Kitsap County*, CPSGMHB No. 95-3-0039c coordinated with No. 97-3-0024c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble* (Sept. 8, 1997), at 24.

> [W]hile some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill is to be "minimized" and "contained" within a "logical outer boundary."

Kitsap argues that it is "logical" to include all four corners in a "crossroads" LAMIRD. Excluding the two undeveloped corners of the crossroads, the County posits, would produce an "abnormally irregular boundary," contrary to one of the criteria of .070(5)(d)(iv). County Response, at 8. The County staff study resulted in a recommendation that the outer boundaries of the commercial area should be based on topographical features, consistent with one of the boundary criteria addressing "physical boundaries such as bodies of water . . . and land forms and contours." Using the creeks and drainages on the east and west sides of the intersections as boundaries serves the additional purposes of protecting critical areas and buffering the crossroads development from rural uses, according to the County. County Response, Index 24412, at 10. The County points out that Bjarnson, one of the property owners, was required to make boundary line adjustments so that the property included in the commercial area was limited to the plateau-side of the affected wetlands. County Response, at 10.

Kitsap next addresses the provisions it has enacted to ensure that future development at George's Corner is consistent with pre-1990 uses and development scale and that it is principally designed to serve the rural population. *Id.* at 14-15. The County points to the purpose of the Neighborhood Commercial zoning designation:

> These commercial centers occur on smaller sites and are intended to provide for the quick stop shopping needs for the immediate neighborhood in which they are located. New centers should be based upon demonstrated need and shall be compatible with a residential setting.

KCC 17.355.010.A. County Response, Ex. B.[8] Commercial uses in the NC zone are limited to retail stores and services of less than 25,000 square feet, general office of less than 5,000 square feet and neighborhood-serving businesses such as banking, real estate, laundry, farm and garden supplies - all requiring either site plan review or conditional use permits. *Id.* These permit reviews, the County asserts, will ensure compatibility of use and scale of development at the intersection. County Response, at 14.

Finally, the County responds to Petitioners' argument that the LAMIRD here should be downsized because only 10% of the County's commercial development is occurring in cities. The County asserts that, in fact, 77% of commercial growth in the County is occurring within urban growth areas, much of it in the unincorporated urban area of Silverdale. County Response, at 15.

Intervenor Bjarnson supports the County's delineation of the logical outer boundary by citing the facts relating to his own property. He states that many adjacent property owners petitioned to have their land included in the George's Corner LAMIRD, and that by rejecting most of these requests, "the County demonstrated it is effectively controlling low-density sprawl." Bjarnson, at 5. The County's use of natural features to define and limit the commercial development is logical and permanent, Bjarnson argues. Bjarnson, at 4.

> [T]he boundary as it now exists is constrained by natural features and sensitive areas. In addition, George's Corner does not have sewer service and development is constrained even within the area approved for more intensive development by the health district in approval of any on-site septic treatment design.
>
> The limitations placed upon this area by Kitsap County were quite clever. The County required Respondent Bjarnson to adjust the boundaries of the two parcels he owned on the southwest corner to make the parcel included within the area of intense rural development smaller. The County also requires Respondent Bjarnson to dedicate a portion of this smaller parcel as open space creating effective protection and preservation of existing

[8] Additional relevant portions of Exhibit B are provided with the County's May 4, 2005, post-hearing memorandum. *Supra,* at 7.

> wetlands. . . . [B]y situating the boundaries of this area as it did, critical areas would be better protected and preserved.

Id. at 4-5 (citations to Index 24122 omitted).

Board Discussion

In order to find Kitsap County out of compliance with the Growth Management Act, the Board must be "left with the firm and definite conviction that a mistake has been made." The Board is not persuaded by Petitioners here.

Kitsap County identified George's Corner as a potential LAMIRD in its 1998 Comprehensive Plan "Rural Appendix Issue Paper." The County took several years to study the designation. County staff carefully considered and documented a range of alternatives for a "logical outer boundary," issuing a staff report that candidly acknowledged uncertainty about application of the GMA standards to the various options. Index 24122, at 9.

The County chose to use the physical contours of the land and the presence of wetlands to define the boundary of the LAMIRD. Consistent with .070(5)(d)(iv)(B), this is likely to result in permanent boundaries that are less subject to pressures for commercial expansion and sprawl. The wetlands and critical areas may help buffer the commercial uses from the surrounding rural lands. The County required a lot-line adjustment on the Bjarnson property to further contain the LAMIRD.

While the Board appreciates Petitioners' objection to the size of the LAMIRD and to the scale of the post-GMA Albertson's development, particularly within just 1.5 miles of the Kingston UGA, the Board cannot say that the LAMIRD boundary adopted by the County is clearly erroneous. The inclusion of vacant parcels and allowance for infill development and redevelopment is expressly permitted in the statute. The "logical outer boundary" delineation described in RCW 36.70A.070(5)(d)(iv) reads: "Existing areas are those that are clearly identifiable and contained and where there is a logical outer boundary delineated predominately by the built environment, but that *may also include undeveloped lands* if limited as provided in this subsection." In 2004, the legislature amended RCW 36.70A.070(5)(d)(i)(C), which requires that new development or redevelopment be consistent in "size, scale, use, or intensity" with the [pre-1990] character of the area, by adding: "Development and redevelopment may include *changes in use from vacant land* … so long as the new use conforms to the requirements of this subsection (5)." Emphasis supplied.

In *Hensley & McVittie v. Snohomish County*, CPSGMHB No. 01-3-0004c consolidated with 02-3-0004, Order Finding Compliance in *Hensley IV* and Final Decision and Order in *Hensley V* (June 17, 2002), this Board approved the logical outer boundaries of two commercial nodes in rural Snohomish County. The Board said:

> The "Built Environment" map depicts: 1) commercial areas or uses in existence in July of 1990; 2) permitted or vested commercial uses prior to 1990; 3) permitted or vested uses between 1990 and 2000; and 4)

> institutional use. The areas are *all clearly identifiable and contained* within the two nodes delineated in the Clearview LAMIRDs by Ordinance No. 01-133. . . . Further, as anticipated and allowed by .070(5)(d)(i) and (iv), the two LOBs [logical outer boundaries] appropriately include undeveloped land for infill development or redevelopment of existing commercial areas and uses within the LOBs. The areas included within the LOBs are *minimized and contained within* the LOBs.

Id. at 15 (emphasis supplied).

Ordinance No. 326-2004 states: "The Planning Commission recommended that … the property within the [George's Corner] LAMIRD LOB should be designated Neighborhood Commercial in order to retain the rural character of the surrounding neighborhood. …. The Board of Commissioners finds that proposed commercial uses in the George's Corner LAMIRD should be the types of commercial uses principally designed to serve the rural community. Any development or redevelopment within the George's Corner LAMIRD shall be consistent with the character of the existing area in terms of building size, scale, use or intensity." *Id.* at 8.

Kitsap's zoning regulations for the Neighborhood Commercial zone will ensure that infill development and redevelopment (a) is designed to meet the needs of existing rural residents and (b) is of a scale more appropriate to the rural character than the suburban grocery store now on the site. The Board finds that the George's Corner LAMIRD designation includes "measures to minimize and contain the existing areas or uses" as required by .070(5)(d)(iv).

Petitioners have not persuaded the Board that the County's logical outer boundary for the George's Corner LAMIRD or the measures to contain it (*i.e.*, the zoning regulations for the LAMIRD) are clearly erroneous.

Conclusion

The Board concludes that Petitioners have **failed to meet their burden of proof** that the George's Corner LAMIRD is noncompliant with RCW 36.70A.020(1), RCW 36.70A.020(2), or RCW 36.70A.070(5). The Board acknowledges the concerns of Petitioners regarding application of the statutory criteria to the delineation of the logical outer boundary for the George's Corner LAMIRD, but the Board is not left with a firm and definite conviction that a mistake has been made. Legal Issue No. 1 is **dismissed.**

B. LEGAL ISSUE NOS. 2 AND 3

Legal Issue No. 2.

> *Does adoption of Resolution 158-2004 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(2) and RCW 36.70A.215 when a buildable lands report shows an inconsistency between the county's comprehensive plan, development regulations and on-the-ground development that has occurred since the adoption of the comprehensive*

plan and development regulations and the Resolution fails to adopt and implement measures reasonably likely to increase consistency as required by the GMA?

Legal Issue No. 3.

Did Kitsap County fail to adopt and implement measures reasonably likely to address the inconsistency between the County's comprehensive plan and development regulations and on the ground development that has occurred since their adoption when the County is required under RCW 36.70A.215 and RCW 36.70A.130 to adopt such reasonable measures no later than December 1, 2004?

The Challenged Action and the Parties

In tandem with adoption of Ordinance No. 326-2004, Kitsap County adopted Resolution No. 158-2004 "Providing an Addendum to the Buildable Lands Analysis Report for Reasonable Measures." The Resolution lists a number of actions previously taken by Kitsap County intended to promote growth and density within urban areas and adopts the list as an addendum to the Kitsap County 2002 Buildable Lands Report (**BLR**).

Kitsap County's 2002 Buildable Lands Report had highlighted excessive sprawl-type development in rural Kitsap County as inconsistent with the County's goals.[9] The GMA requires that counties identify and implement measures "reasonably likely to increase consistency" between development trends indicated by the buildable lands analysis and the goals and policies of county GMA plans.

Resolution 326-2004 recites the impetus for its adoption as follows: Kitsap County prepared its required Buildable Lands Report in August 2002, analyzing development data and identifying a process to monitor development to "ensure that the Urban Growth Areas (UGAs) are being developed at urban densities." Resolution, at 1. The BLR failed to include a list of "reasonable measures" to increase growth and density in urban areas. However, the County had intended to supplement the BLR with such a list during its 2004 comprehensive plan review. *Id.*

---

[9]The BLR states:

> Residential development has been active in Kitsap County between 1995 and 1999, with a *slight majority of all new residential permits issued in the rural unincorporated area*. [A chart indicates *55% of the residential units permitted are outside UGAs and cities*.] . . . In terms of land area, the *vast majority of new residential land consumed is in the jurisdiction of rural unincorporated Kitsap County.* [A chart indicates *81.9% of the residential acres permitted are outside UGAs or cities.*] . . In rural unincorporated Kitsap County, development *densities average approximately 1 unit per acre*, which represents a midpoint between extremely rural and urban style densities. One development constraint is the large number of smaller, non conforming lots of record. Until these parcels are fully absorbed, the County may face obstacles in directing new growth toward urban areas.

BLR, Executive Summary, at 7-8, (emphasis supplied) [Core Document].

The Resolution recites that on August 9, 2004, the Board issued its decision in *City of Bremerton, Suquamish Tribe, et al. v. Kitsap County* (***Bremerton II***), CPSGMHB No. 04-3-0009c, Final Decision and Order (Aug. 9, 2004), in which the Board noted that Kitsap County had not identified a list of reasonable measures and that reasonable measures should be adopted and implemented no later than December 1, 2004.[10]

The Resolution states that the County since 1995 has adopted a number of measures intended to promote growth and density in urban areas, including new development regulations, sub-area plans, and revisions to its comprehensive plan. The County states its intention to "work to identify additional means to direct growth to the urban growth areas other than expanding UGAs." *Id.*

Petitioners challenge the Resolution as non-compliant with the GMA requirements for reasonable measures. The parties to this issue are Petitioners Futurewise and Kitsap Citizens for Responsible Planning, Jerry Harless as Intervenor on the side of Futurewise, and Respondent Kitsap County. Overton provides an *amicus* brief urging the Board to support the County's action.

Applicable Law

RCW 36.70A.215, added to the Growth Management Act in 1997, sets up a review and evaluation program to ensure the achievement of urban densities in urban growth areas consistent with the goals of the GMA and with adopted plan objectives. Section 215 (emphasis supplied) provides as follows:

> (1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities *shall consider information from other appropriate jurisdictions* and sources. The purpose of the review and evaluation program shall be to:
>
> > (a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

[10] In *Bremerton II*, with respect to Buildable Lands and Reasonable Measures, the Board concluded:

> The Board concludes that the County's BLR demonstrates inconsistencies between the development that has occurred in the County and what is envisioned by the GMA and the County's CPP and Plan. The Act, as interpreted by this Board in *FEARN*, requires the County to implement reasonable measures no later than December 1, 2004.

Id. at 55.

(b) *Identify reasonable measures*, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

(2) The review and evaluation program shall:

(a) *Encompass land uses and activities both within and outside of urban growth areas* and provide for annual *collection of data on urban and rural land uses*, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

(b) Provide for evaluation of the data collected under (a) of this subsection every five years as provided in subsection (3) of this section. The first evaluation shall be completed not later than September 1, 2002. The county and its cities may establish in the county-wide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the county-wide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the county-wide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land

needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the county-wide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, *the county and its cities shall adopt and implement measures that are* ***reasonably likely to increase consistency*** *during the subsequent five-year period.* If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency. *The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.*

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the county-wide planning policies and the comprehensive plans and development regulations of the counties and cities.

Discussion and Analysis

Positions of the Parties

Futurewise states that the need for "reasonable measures" was established in *Bremerton II*, where the Board identified significant discrepancies between on-the-ground development patterns in Kitsap County and the growth patterns envisioned in the County's Comprehensive Plan. Futurewise PHB, at 15-16. The County's 2002 Buildable Lands Report (**BLR**) documented excessive growth in rural areas of the County (sprawl) and insufficient compact urban development. *Id. citing* BLR, at 7-8.

Futurewise argues that the County must address the high rate of growth in its rural area. Futurewise PHB, at 20. The County can't escape its obligation to cure these inconsistencies simply by blaming pre-GMA rural platting, Futurewise contends; it must affirmatively develop strategies reasonably likely to alter the pattern of sprawl. *Id.*

Futurewise points out that the Kitsap County Comprehensive Plan calls for using the BLR to track rural as well as urban growth and to adopt measures to curb sprawl:

> **RL-3** Kitsap County will use the land monitoring and evaluation program established to help implement the Kitsap County Comprehensive Plan to track the type, location, amount and rate of *growth in the rural area*. Growth will be evaluated to ensure that it is consistent with Kitsap County Comprehensive Plan assumptions and policies. Based on the *findings of this monitoring*, Kitsap County will consider the need to further evaluate or limit the amount or rate of growth in the rural area or to *modify its development regulations to ensure* that rural character is maintained and *that urban growth does not occur in the rural area*.
>
> **IMPLEMENTATION STRATEGIES AND PROGRAMS**
>
> **1. Rural Capacity and Lot Aggregation**
>
> Kitsap County recognizes the substantial number of existing lots located in the designated rural area as a result of past practices. Existing capacity is significantly greater than the rural target population allocation for the twenty-year planning period. Kitsap County *will research and evaluate possible incentives* that could be used to *encourage the aggregation of existing small lots* in the rural area. Kitsap County will review this information in the context of actions that may be considered pursuant to RL-3.

Index #25559, Kitsap County Comprehensive Plan, amended Dec. 8, 2003, at 67.

Futurewise argues that none of the County's adopted measures listed in the Resolution is directed toward dealing with the documented excessive rural growth despite the specific direction in RL-3. Futurewise PHB, at 21-22. Futurewise notes that a number of the development regulations listed in Resolution 158-2004 actually were adopted *prior* to the Buildable Lands Report and clearly are not working; thus they are not "reasonably likely" to cure inconsistencies between actual development patterns and GMA plans. *Id*. at 19.

Harless as Intervenor reiterates that Kitsap's Buildable Lands Report documents inconsistencies between on-the-ground growth patterns in the county and the patterns envisioned in the GMA, Countywide Planning Policies, County Comprehensive Plan and development regulations. In this context, Harless asserts, merely listing a set of existing and pre-GMA development regulations does not amount to identifying and implementing measures reasonably likely to produce a change. Harless PHB 2,3,4, at 15. Harless reviews each of the 18 provisions[11] listed in the matrix attached to Resolution 326-2004

[11] The following adopted and implemented measures are charted in a matrix attached to the Resolution: 1. Encourage accessory dwelling units in single-family zones. 2. Allow clustered residential development. 3. Allow duplexes. 4. Allow town houses and condominiums in single-family zones. 5. Encourage development of urban centers and urban villages. 6. Encourage mixed use development. 7. Create annexation plans. 8. Affordable and manufactured housing development/zoning. 9. Urban amenities. 10. Targeted capital facilities investments. 11. Master planning for large parcel development. 12. Interim development standards. 13. Encourage transportation-efficient land use. 14. Density bonuses in the UGA. 15. Increase allowable residential densities. 16. Urban growth management agreements. 17. Critical

and argues that none of them is new or significant. *Id*. at 16-24. These old development regulations, he contends, do not satisfy the action-forcing requirement of Section .215(4).

Measures that *could* produce tangible results in the next five years, he asserts, include (1) providing adequate urban services within UGAs, (2) prohibiting platting within the UGA at less than a 4-unit-per-acre urban density, and (3) reducing rural density through TDRs [transfer of development rights], lot aggregation, differential impact fees, and similar strategies. *Id*. at 10; Harless Reply 2,3,4, at 6.

Harless rejects the theory that reasonable measures should be limited to urban area policies and regulations. Harless PHB 2,3,4, at 14. He points out that Section .215(2)(a) requires analysis of growth patterns both inside and outside of the UGA, and he argues that Section .215(4) requires reasonable measures regardless of whether UGA expansion is proposed. *Id.* Similarly, he notes, the Kitsap County Comprehensive Plan [RL-3] directs the BLR program to address rural growth.

Harless points to recent County staff reports prepared in connection with the County's parallel process to update Countywide Planning Policies. Supp. Ex. 1, 2, and 3. Those staff reports show that the inconsistent on-the-ground growth patterns have persisted, and are even worse than what was reflected in the 2002 Buildable Lands Report. Harless Reply 2,3,4, at 10. Harless states that County staff recommended new approaches to reduce the problem of nonconforming rural lots, but these measures were rejected by the county commissioners. *Id.*; see Index 27103, 27370, and 27143.

The County responds by arguing that Section 215 only applies to urban growth and growth within the UGA, not to rural growth. County Response, at 17-19. The County reads Section 215(4) to limit "reasonable measures" to the three evaluation factors of subsection 3, which all focus on *urban* densities. *Id.* No reasonable measures are required if BLR inconsistencies occur in the *rural* area, according to the County. The County's problem is pre-platted small lots in the rural area where there are vested rights to develop at pre-GMA levels; Kitsap argues that it cannot eliminate the small rural lots that create the core problem. *Id*. at 25.

Kitsap states that it has addressed urban densities through cluster provisions and other density enhancements in its UGA expansions and sub-area plans. *Id*. at 22. The 2004 UGA expansions, the County points out, are for commercial/industrial growth, not housing. *Id*. at 25. As to residential density, the County *lowered* the target split for rural/urban growth in its Countywide Planning Policies to address the problem of inconsistencies between its targeted and actual growth. *Id*. at 19; Ordinance 327-2004, Attachment A, at 14 [Core Document]. Beyond that, the County argues that the recent staff reports relied on by Petitioners, Supp. Ex. 1, 2, and 3, are worth very little because

---

services near homes, jobs, and transit. 18. Transit-oriented development. [Note: Some of these measures only apply within specific sub-areas.]

they do not include development in the incorporated cities, only in unincorporated urban growth areas.[12] *Id*. at 28-29.

Amicus Overton focuses on the rural/urban issue and complains that petitioners seek to prevent reasonable use of rural lands. Overton, at 1-2. The cities of Kitsap County, *amicus* alleges, are primarily at fault for the imbalance in growth trends, because the cities have not made the urban areas attractive to developers. *Id*. at 5, 13. Overton argues that Section 215(4) limits "reasonable measures" to conflicts between comprehensive plans and the subsection 215(3) factors, all of which point to *urban* development. According to Overton, there are no statutory requirements for "reasonable measures" with respect to excessive development of *rural* lands. *Id*. at 15-16.

Board Discussion

The Board's analysis must begin with a brief review of *City of Bremerton, Suquamish Tribe, et al. v. Kitsap County* (***Bremerton II***), CPSGMHB No. 04-3-0009c, Final Decision and Order (Aug. 9, 2004). In that case, Suquamish Tribe, et al., challenged Kitsap County for expanding its urban growth areas despite the finding in the 2002 Buildable Lands Report that sufficient capacity remains within existing UGAs to accommodate projected growth. *Bremerton II*, at 48. Suquamish noted (a) the continued location of a majority of population growth outside the designated Urban Growth Areas of Kitsap County, (b) continued residential development at urban densities in Kitsap County rural areas, and (c) urban densities not being achieved in the urban areas. These development patterns are inconsistent with Countywide Planning Policies and with the goals and policies of Kitsap's Comprehensive Plan. Suquamish contended that Kitsap County had failed to act, as required by RCW 36.70A.215, to implement measures reasonably likely to increase the consistency between on-the-ground development and the goals and policies of the Comprehensive Plan. *Id.*

The Board in *Bremerton II* agreed with Suquamish that the Kitsap Buildable Lands Report had identified development patterns inconsistent with the GMA, the Countywide Planning Policies, and its Comprehensive Plan. *Id*. at 54. "The BLR identifies inconsistencies, therefore the County must *not only identify* reasonable measures, *but take action to implement* them as required by RCW 36.70A.215(4)." *Id*. (emphasis added). However, the Board disallowed the Suquamish failure-to-act challenge based on an earlier ruling that "the outside limit for a local government to adopt reasonable measures to avoid the need to adjust the UGA is the December 1, 2004 deadline established in .130(4)." *FEARN v. City of Bothell*, CPSGMHB Case No. 04-3-006c, Order on Motions (May 20, 2004), at 8. The Board concluded that a failure-to-act challenge would not be ripe unless the statutory deadline for review and update of comprehensive plans – December 1, 2004 – passed without action. *Bremerton II*, at 55.

It is undisputed that Kitsap County adopted Resolution No. 158-2004 prior to the December 1, 2004 statutory deadline and that the Resolution added the identified and

[12] The Board notes that the County Commissioners requested these staff reports and relied on the information provided by the reports in amending the Countywide Planning Policies in November, 2004.

already-implemented measures to the Buildable Lands Report. This action is consistent with the Board's Final Decision and Order in *Bremerton II*.

However, Petitioners Futurewise and Intervenor Harless contend that the County's identified "reasonable measures" do not meet the substantive requirements of the GMA. Harless reviews each of the 18 listed measures and argues that none are reasonably likely to reverse the pattern of rural sprawl and urban under-development. Petitioners assert that the County should have adopted the measures proposed by County staff and reviewed by the Planning Commission. These measures, summarized in Appendix B, attached, were identified by Kitsap County for possible future analysis, public process and implementation. Index 27143, at 15-25. Some of these measures overlap items in the Resolution 158-2004 list. Specific measures to cure sprawl in rural areas are included.

The Board is not persuaded that Kitsap has failed to comply with the GMA. RCW 36.70A.215(4) and (5) is quite clear about the method for determining the substantive efficacy of measures adopted and implemented under the "reasonable measures" requirement. Subsection (4) provides: "The county and its cities *shall annually monitor the measures* adopted under this subsection *to determine their effect* and may revise or rescind them as appropriate." Subsection (5) requires the Department of Community, Trade and Economic Development to compile a list of methods used by counties and cities and to submit to the legislature, by December 31, 2007, "a report *analyzing the effectiveness* of the activities described in this section in achieving the goals envisioned by the county-wide planning policies and the comprehensive plans and development regulations of the counties and cities."

If Kitsap County's adopted measures are insufficient, as these challengers allege, the annual monitoring will demonstrate the failure and the County will be obligated to take corrective action.[13] Moreover, if more effective strategies are not adopted, CTED's 2007 report will bring the failure to the attention of the legislature.

Significantly, Resolution No. 158-2004 commits Kitsap County to consider *additional measures*:

> 2. In addition to those reasonable measures that the County has already adopted and implemented, … Kitsap County staff should begin the process of identifying additional reasonable measures the Board of County Commissioners should consider adopting and implementing.

The Resolution recognizes that the density regulations itemized in the attachment are a first step, and states: "as Kitsap County continues to plan under GMA, it will work to identify additional means to direct growth to the urban growth areas other than expanding UGAs." *Id*. at 1; *see also* Ordinance 326-2004, at 13-14. The additional measures identified by County staff and reviewed by the Planning Commission in 2004 are a likely

[13] None of the parties identified any County reports evaluating or monitoring the reasonable measures the County has in place; they do not indicate, for example, how many ADUs have been added, or to what extent clustering or density bonuses have been actually been used to decrease land consumption.

next step. Index 27143, at 15-25 [Appendix B, *infra* at 44-45]. In light of the more recent staff reports (Supp. Ex. 1, 2, and 3), showing persistent patterns of sprawl into the rural area and underdevelopment in urban areas, Kitsap will need to intensify its efforts, in cooperation with its cities, to redirect growth to urban areas.

The GMA gives counties ample discretion to adopt and implement a more varied array of measures than the urban development regulations listed in Resolution 158-2004, including measures to refocus development away from rural to urban lands. Measures to reduce rural density, such as TDRs and lot aggregation, should be on the table. Kitsap's Comprehensive Plan Policy RL-3, *supra* at 21, mandates that the County evaluate *rural* growth patterns for consistency with the plan and "research and evaluate possible incentives" for rural lot aggregation. Kitsap County can take advantage of the success and failures of other Central Puget Sound counties in implementing such strategies. Indeed, RCW 36.70A.215(1) provides at the outset: "In developing and implementing the review and evaluation program,… the county … *shall consider* information from other appropriate jurisdictions." (Emphasis supplied.)

Amicus Overton misreads the GMA with the argument that reasonable measures should only address urban, not rural, development patterns. The review and evaluation program established by RCW 36.70A.215(2) is required to "encompass land uses and activities *both within and outside of urban growth areas* and provide for annual collection of data on *urban and rural* land uses, development, critical areas and capital facilities." Emphasis supplied. The legislature reasonably intended, when adopting this language, that counties and cities use the data collected concerning *rural* development to inform the strategies they would implement to increase the consistency of their growth plans.

RCW 36.70A.215(2)(d) recognizes that other "reasonable measures" might involve changes to Countywide Planning Policies and calls for "the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section."[14] Subsection (4) provides: "If necessary, a county and its cities … shall adopt amendments to county-wide planning policies to increase consistency." Options for consideration have been identified by County staff and by Petitioners, and again, the experience of other counties may be instructive.[15]

---

[14] Kitsap County's response to the updated data in Supp. Ex. 1, 2, and 3 was to amend its County-wide Planning Policies in 2004 to incorporate a planning target more closely approximating the existing pattern of rural sprawl, rather than amending its policies to increase the consistency of actual growth with its planning targets. County Response, at 19; Harless 2,3,4 Reply, at 7-8. However, the County-wide Planning Policies are not before the Board in this proceeding.

[15] Measures might be on the table, for example, amending the CPPs to require higher density along transit routes in cities and unincorporated urban areas; establishing <u>minimum</u> densities for subdivisions in both cities and the unincorporated urban area; modifying sub-area planning to disallow UGA expansion; requiring UGA expansion to be offset by contraction elsewhere; requiring that all UGA adjustments be considered on a county-wide basis (e.g., discontinue sub-area and ad hoc site-specific UGA expansions); rolling population targets forward every ten years, as required by the GMA, rather than every five years;

The Board finds and concludes that Petitioners have not met their burden of proving that Resolution 158-2004 is clearly erroneous. It is an appropriate beginning, especially in light of the County's acknowledgement of its intent to do more, subject to the time needed for public process.

Conclusion

The Board concludes that Petitioners Futurewise and Intervenor Harless **have not met their burden** of proving that Kitsap County failed to act to identify and implement reasonable measures to increase the consistency between its plan and on-the-ground development. The efficacy of the measures identified and implemented by the County will be determined through annual monitoring by the County and its cities, as required by RCW 36.70A.215(4), with revisions as appropriate. Legal Issue Nos. 2 and 3 are **dismissed.**

C. LEGAL ISSUE NO. 6

Legal Issue No. 6.[16]

> *The effects of Ordinance 326-2004 notwithstanding, did Kitsap County fail to comply with RCW 36.70A.130 when it did not review and revise its Urban Growth Areas (UGAs) to accommodate forecast and allocated growth over the succeeding twenty years?*

The Challenged Action and the Parties

The Growth Management Act recognizes that land use planning is not static. Provisions and timelines for required periodic review and update are located in various sections of the Act. RCW 36.70A.130 sets out requirements for annual comprehensive plan amendments in Section .130(2), for more-comprehensive "updates" of plans and development regulations (critical areas ordinances in particular) in Sections .130(1) and (4), and for review of urban growth area designations and densities in Section .130(3).

Kitsap County Ordinance No. 326-2004 is subtitled "Amending the Comprehensive Plan and Map for 2004 and Making Corresponding Amendments to the Kitsap County Zoning Code and Map." The Ordinance recites that it is enacted pursuant to County procedures

---

targeting capital facilities and amenities to support urban density. Appendix B, at 44-45; Harless Reply 2,3,4, at 16.

[16] The Board **dismissed** Petitioner Harless' Legal Issue Nos. 5, 6, 7, and 8 as untimely in its Order on Motions (March 15, 2005) and subsequently **reinstated and restated** Legal Issue No. 6 in its Order on Reconsideration (March 31, 2005). Legal Issue No. 6 was originally stated in Harless' PFR as follows: *The effects of Ordinance 326-2004 notwithstanding, did Kitsap County fail to comply with RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130 and RCW 36.70A.215 and fail to be guided by RCW 36.70A.020(1) and (2) when it did not implement measures reasonably likely to increase consistency with its plan targets (i.e., increase the proportion of growth locating in UGAs, increase urban densities and decrease rural densities) and did not review and revise its Urban Growth Areas (UGAs) to accommodate forecast and allocated growth over the succeeding twenty years?*

for annual review and possible amendment of the plan, particularly to "provide an opportunity for the public to propose amendments." *Id*. at 1.This *annual* amendment process is authorized by RCW 36.70A.130(2).

The Ordinance further recites that it is enacted pursuant to the "compliance review" [*update*] requirements of RCW 36.40A.130(1) and the December 1, 2004, deadline of .130(4). *Id*. at 2, 12-13.

While Ordinance 326-2004 was adopted to comply with the compliance review [update] requirements of RCW 36.70A.130(1) and (4) - [and with the annual review of RCW 36.70A.130(2)] – it does not address the scheduled review of *urban growth areas*, required at least every ten years under RCW 36.70A.130(3).

Petitioner Harless challenges Kitsap County's failure to act to conduct the Subsection (3) review of its urban growth area designations and densities.[17] Kitsap County contends that Harless' petition is not ripe and must be dismissed because Kitsap County was not required to undertake the Subsection (3) review in 2004.

The issue before the board is – "Whether the GMA required Kitsap County to conduct the .130(3) urban growth area review no later than 2004?" [*i.e*., Is this a failure to act as Petitioner Harless alleges?]

Applicable Law

RCW 36.70A.130 – Comprehensive plans- Review – Amendments - lays out the processes and schedules for review and amendment of county and city plans and development regulations and urban growth area designations and densities.

> (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. A county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section. . . . Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore. The review and evaluation required by this subsection *may be combined with the review required by subsection (3)* of this section. The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population

[17] Futurewise, Kitsap Citizens for Responsible Planning, Bjarnson, and Overton are not parties nor participants with respect to this issue.

allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(b) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the time periods specified in subsection (4) of this section. . . .

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. . . .

(3) Each county that designates urban growth areas under RCW 36.70A.110 *shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area*. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, *shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period*. The review required by this subsection *may be combined with the review and evaluation required by RCW 36.70A.215*. [*Supra*, at 18]

(4) The department shall establish a schedule for counties and cities to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter. The schedule established by the department shall provide for the reviews and evaluations to be completed as follows:

(a) *On or before December 1, 2004,* and every seven years thereafter, for Clallam, Clark, Jefferson, King, *Kitsap*, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties.

Discussion and Analysis

Positions of the Parties

Petitioner Harless starts from the RCW 36.70A.130(3) requirement that a county review and reassess its Urban Growth Areas (UGAs) "at least every ten years" in light of updated 20-year population forecasts. "This is the periodic update that extends the twenty-year GMA planning period established in RCW 36.70A.110 from the original 1992-2012 another ten years to 2022, based upon a revised [2002] OFM population forecast and an updated countywide land capacity analysis." Harless PHB 6, at 1. Kitsap has not done its 10-year UGA review. Kitsap updated its population targets in November, 2004, based on OFM 2002 population forecasts, but did not review its Urban Growth Area. Harless PHB, at 5; Ordinance 327-2004 [Core Document] amending Countywide Planning Policies.

Harless argues that the December 1, 2004 deadline for updating comprehensive plans [RCW 36.70A.130(4)] must be read in the light of RCW 36.70A.040(3) which set the initial requirements for GMA planning. Counties initially subject to GMA planning were required to (a) adopt county-wide planning policies, (b) designate and protect critical areas and natural resource lands, (c) designate urban growth areas, and (d) adopt comprehensive plans and consistent development regulations "on or before July 1, 1994."[18] Harless PHB 6, at 7-8. These provisions create the essential statutory context for the UGA review required by RCW 36.70A.130(3). *Id*. at 11.

Harless argues that measuring the UGA review period from the date of a tardy county's adoption or from the date when a non-compliant county finally brought its initial plan into GMA compliance would defeat an unambiguous legislative scheme and interfere with necessary city/county coordination. Harless PHB 6, at 12. Harless also contends that Kitsap's failure to timely review its UGAs perpetuates piecemeal sub-area urban expansions and ad-hoc response to site-specific UGA amendment requests; these practices promote sprawl and undermine growth management goals. *Id.* at 13-15.

The County responds that its interpretation of the statutory deadline is reasonable. Kitsap reasons that the requirement to review UGA designations every ten years should run from 1998, the date Kitsap adopted a GMA-compliant plan and urban growth areas, or from 1999, the year the Board lifted its Order of Invalidity for Kitsap's plan. Thus, Kitsap's UGA update will not be due until 2008 or 2009. County Response 6, at 4.

Kitsap notes that its interpretation is consistent with a 2002 CTED bulletin titled "Frequently Asked Questions Regarding GMA Updates" (FAQ).[19] *Id*., Exhibit A. Kitsap

[18] Harless reasons that the provisions of Section 130(1)(a) and (3) that say "reviews may be combined" merely deal with the July 1/December 1 discrepancy; i.e., the UGA review of .130(3), required "at least every ten years" following the statutory start date of July 1, 1994, may be undertaken by December 1, 2004, concurrent with the comprehensive plan update required by .130(1) and (4).

[19] CTED's FAQ advised: "If … a final UGA is challenged in a petition to a growth management hearings board, the starting date for calculating the ten-year deadline may be reset depending on the outcome of review by the board. Where the board has invalidated a comprehensive plan provision or development

argues that the Subsection (4) language requiring review every seven years and the Subsection (3) language requiring review every ten years cannot be reconciled, and so its reliance on CTED is reasonable. County Response 6, at 7.

In reply, Harless contends that the County's reading of .130 conflicts with both .040 and with .110. Kitsap cannot claim surprise, Harless argues, because other Central Puget Sound counties and cities have reviewed their UGAs in consideration of the 2004 deadline. Harless Reply 6, at 2; Harless PHB 6, at 12.

According to Harless, Kitsap County is asking for a unique exception to the GMA planning schedule, which neither the Board nor CTED can grant. CTED technical bulletins are not the law, Harless points out, citing Board precedents,[20] and in this FAQ, CTED acknowledged that its advice was merely its own "logical interpretation" of a statutory provision that "does not specify a starting date for calculating the ten-year deadline." Harless Reply 6, at 4; *see* Ex. A to County Response 6.

The purpose of .030(3) UGA review, Harless submits, is to roll the 20-year planning period forward for an additional ten years "to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period" [RCW 36.70A.130(3)]; the Board's Order of Validity did not "reset that clock." Harless points out that Kitsap's first plan and UGA designation, as rewritten in 1998 and declared valid in 1999, was still a plan based on OFM's 1992 population forecast and designed to accommodate population projections for 1992-2012. That planning now needs to be rolled forward, based on OFM 2002 numbers, to cover the period 2002-2022. Kitsap adopted the extended population forecast in its 2004 CPP amendments [Harless PHB 6, at 5; Ordinance 327-2004] but has not done the land capacity analysis and review necessary to re-size its urban growth areas. Delaying the County's ten-year UGA update until 2008 or 2009, Harless argues, would contradict the RCW 36.70A.110 requirement for a twenty-year plan. Harless Reply 6, at 3-4.

Board Discussion

The requirement that urban growth should be directed to designated urban growth areas is one of the main organizing principles of the GMA's approach to managing growth. "The Act contains five core substantive mandates. . . . *First*, new growth must be concentrated in Urban Growth Areas (UGAs). . . ."[21] Richard L. Settle, *Washington's Growth*

---

regulation affecting UGAs, the starting date for calculating the ten year deadline period should begin to run when the board files its order lifting invalidity in response to actions taken by the county." County Response 6, Ex. A, at 5.

[20] *Citing King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011 Order on Reconsideration and Clarification (Dec. 15, 2003), at 4; *Bear Creek*, CPSGMHB Case No. 95-3-0008c, Order on Supreme Court Remand (June 15, 2000).

[21] "The required concentration of population in urban growth areas and the reciprocal prohibition of development at urban, or even suburban, densities in rural areas are the Act's two most central and pervasive goals. … By concentrating population in tightly limited UGAs, public facilities and services can be more efficiently provided, natural resource industries and environmentally critical areas can be protected, and options for future development can be preserved." *Id.* at 48.

Management Revolution Goes to Court, 23 Seattle University Law Review 5, at 12 (1999), emphasis supplied.

The GMA requires counties to "include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period." RCW 36.70A.110(2). Counties are required to base the size of UGAs and development allowed within them on the Office of Financial Management (OFM) twenty-year population projections. RCW 36.70A.120; *Diehl v. Mason County*, 94 Wash. App. 645, 653, 972 P.2d 543 (1999). "At least every ten years," the UGA designation process must be repeated for the succeeding twenty-year period, based on the most-recent OFM twenty-year forecast. RCW 36.70A.130(3).

The Board has reviewed the legislative history of the relevant GMA deadlines and the UGA review provision of RCW 36.70A.130(3), to determine *when* Kitsap County's .130(3) UGA review must be done.

The Growth Management Act was adopted in **1990**.[22]

- Section 4(3) of S.H.B. 2929 [codified as RCW 36.70A.040] required the fastest growing counties [including Kitsap County among the four Central Puget Sound counties] to adopt compliant comprehensive plans by July 1, 1993.

- Section 12 [.120] required development regulations implementing the new comprehensive plans to be adopted within one year, or by July 1, 1994.[23]

- Section 11 [.110] required the counties planning under the Act [including Kitsap County – a Central Puget Sound county] to designate urban growth areas. No deadline was specified here.

- Section 13(1) [.130(1)] called for "continuing evaluation and review" of adopted comprehensive land use plans and development regulations;

- Section 13(2) [.130(2)] provided that amendments should be considered no more frequently than once a year;

- Section 13(3) [.130(3)] required a review of urban growth areas at least every ten years. Set forth in full, the subsection provided:

> (3) Each county that designates urban growth areas under section 11 of this act shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the

---

[22] S.H.B. 2929; Laws of 1990, 1st Ex. Sess., ch. 17.

[23] Development regulations to protect resource lands and critical areas were to be adopted by September 1, 1991, with the provision that they might be amended to insure consistency when comprehensive plans and development regulations were subsequently adopted (July 1, 1993 and July 1, 1994). Section 6 [.060].

> incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period.

Thus for Kitsap County, like all Central Puget Sound counties and cities, the original legislative scheme required GMA Plans to be adopted by **July 1, 1993** and implementing regulations to be adopted by **July 1, 1994**. Although county designation of UGAs was required, **when** was not clearly specified [arguably by July 1, 1993 if in the Plan or July 1, 1994 if in development regulations]. Nonetheless, the designated UGA was required to be reviewed at least every ten-years. *The only change to .130(3) since 1990 has been the addition in 1997 of a sentence allowing UGA review to be combined with the reviews and updates required by the Buildable Lands Review process established in that year and codified in RCW 36.70A.215.*

The **1991** legislative session[24] made no changes to the "at least every ten year" schedule for review of UGAs.

- Section 2 [.210] added a requirement for development of county-wide planning policies, with a deadline of September 1, 1992. This was to include policies to implement the UGA requirements of RCW 36.70A.011.

- Some flexibility was added to the schedule for comprehensive plan adoption; new section 15 (.045) allowed CTED to extend the comprehensive plan deadline for jurisdictions by not more than 180 days past the statutory due date in order to "facilitate expeditious review and interjurisdictional coordination."

In **1993**, the legislature summarized the requirements for counties required to plan under GMA [including Kitsap County, a Central Puget Sound county] in its revision to RCW 36.70A.040(3).[25] The inserted language specified the actions to be taken by GMA counties and cities, *amending some deadlines*. Actions required are: (1) adoption of countywide planning policies per RCW 36.70A.210[26]; (2) designation and protection of critical areas and natural resource lands, under RCW 36.70A.170 and .060; (3) designation of UGAs pursuant to RCW 36.70A.110; and (4) adoption of comprehensive

[24] Laws of 1991, 1st Ex. Sess., ch. 32.

[25] Laws of 1993, 1st Sp. Sess., ch. 6, §1(3).

[26] The 1993 legislation amended the deadline for countywide planning policy adoption from September 1, 1991 to July 1, 1992. Section 4 [.210].

plans and implementing development regulations by **July 1, 1994** (with a clause allowing a six month extension for development regulations upon notice to CTED).

Significantly, RCW 36.70A.110, the UGA section, was amended to require GMA counties to adopt regulations designating interim urban growth areas by October 1, 1993, and final UGAs at the time of adoption of comprehensive plans, *i.e.*, **July 1, 1994**.[27] However, no change was made to the requirement to review UGAs at least every ten years.

This basic framework has persisted, despite almost annual amendments to the GMA. *Comprehensive plans, including Final UGA designations, were to be adopted by July 1, 1994, and UGAs were to be reviewed at least every ten years*. Thus, the GMA required Kitsap County to adopt its Plan, including its designated UGAs, by July 1, 1994. Kitsap's UGA review could be not later than 10 years – July 1, 2004.

The **1994** legislative session responded to the Regulatory Reform Task Force Recommendations.[28] No changes were made to the July 1, 1994, deadline for adopting comprehensive plans and UGAs or the requirement for UGA ten-year review.

The **1995** legislative session added detail and exceptions to the public process and annual review provisions of RCW 36.70A.130(2) but retained the July 1, 1994, deadline for comprehensive plan adoptions and the requirement for review of UGAs at least every ten years.[29]

The **1997** legislative session added the Buildable Lands Review provisions codified as RCW 36.70A.215.[30]

- The first Buildable Lands Report (**BLR**) deadline was set at September 1, 2002, with annual monitoring and additional evaluation reports every five years.

- Section .130(1), requiring continuing review and evaluation of plans, was amended to add: "Not later than September 1, 2002, and at least every five years thereafter, a county or city shall take action to review, and if needed, revise its comprehensive land use plan and development regulations to ensure that the plan and regulations are in compliance with the requirements of this chapter. The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section."

- Section .130(3), the ten-year UGA review, was also amended with the addition of the sentence: "The review required by this subsection may be combined with the review and evaluation required by section 25 [RCW 36.70A.215] of this act."

[27] Laws of 1993, 1st Sp. Sess., ch. 6, §2(4).

[28] Laws of 1994, ch. 249.

[29] Laws of 1995, ch. 347, §106.

[30] Laws of 1997, ch. 429, §10.

Together, the **1997** amendments **required:** 1) evaluation of on-the-ground development trends on a five-year cycle beginning September 2002 [.215]; and 2) a compliance review of comprehensive plans and development regulations on a five-year cycle also beginning September 2002 [.130(1)].

The **1997** amendments **allowed**: 1) the .130(1) compliance review to be combined with the .215 BLR review – or – they could be prepared separately, either way they were both still due in September of 2002; and 2) the .130(3) "at least every ten year UGA review" could be combined with the BLR. Thus, at its discretion, a Central Puget Sound county, including Kitsap County, could include its .130(3) UGA review with the September 2002 BLR report – or – prepare it separately in 2004 [*i.e. ten years after the 1994 plan deadline*].

From 1997 to 2002, counties could conduct three separate evaluations, with two due in 2002 and one in 2004, or counties could combine all three evaluations for 2002. [*i.e.* conducting the .130(3) UGA evaluation early – at least every ten years.]

The GMA was amended in **1998** and **2000**, with no relevant changes to these sections.[31]

In **2002** the required compliance reviews of RCW 36.70A.130(1) were again modified by the legislature. [32]

- The September, 2002, deadline for compliance reviews was deleted, and a new schedule was enacted as Subsection (4).

- A sentence was added to subsection (1) specifying that the compliance review "shall include … consideration of critical area ordinances and … an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management."

- Subsection (2), which requires public process and annual amendments, was amended to clarify that the compliance reviews of subsection (1) would now be called "updates" and would be governed by the schedule in subsection (4).

- Subsection (4) set a new schedule for compliance reviews, with Central Puget Sound, including Kitsap County, comprehensive plan "updates" **due December 1, 2004.**

- The provision of .130(1) allowing the newly-scheduled "updates" or compliance reviews to be combined with the .130(3) UGA reviews was retained, as was the .130(3) sentence allowing UGA reviews to be combined with BLR's.

Thus, the significant review schedule adjustments legislatively enacted in 2002 made virtually[33] no change to the "at least every ten year" UGA review requirement. In fact, it

[31] Laws of 1998, ch. 171; Laws of 2000, ch. 36.

[32] Laws of 2002, ch. 320, §1.

reinforced the logic of the underlying scheme of UGA reviews no more than 10 years after initial required adoption of Central Puget Sound jurisdiction comprehensive plans – including Kitsap County.

The GMA was amended again in the **2003, 2004** and **2005**, with no changes relevant to this analysis.[34]

The Board finds that in the course of almost-annual amendments to the GMA from 1990 to 2005, there has been no change in the timetable for UGA reviews. Central Puget Sound counties and cities were required to adopt their county-wide planning policies, comprehensive plans, and development regulations and establish their urban growth areas by July 1994 and review their UGAs comprehensively "at least every ten years" thereafter.

The Board further finds that the legislature has amended GMA deadlines from time to time, expressly allowing CTED to grant certain specific extensions, in recognition of the complexity of analysis and public process that may be involved, but there has been no such statutory extension or authority granted to CTED concerning the required UGA review.

Therefore, the Board concludes that the Act required Kitsap County to conduct its .130(3) UGA review by no later than December 1, 2004.[35]

There are important policy reasons for a consistent timeline for UGA review. Cities and counties need to coordinate their planning for urban growth, and allowing the dates for review cycles to begin when plans are brought into GMA compliance would quickly result in the kind of "uncoordinated and unplanned" land use that GMA was enacted to prevent. RCW 36.70A.010. "It is in the public interest that … local governments … cooperate and coordinate with one another in comprehensive land use planning." *Id.* Allowing tardy or non-compliant plans to "reset the clock" undermines that coordination.

The UGA review cycle also fits well with the OFM population forecasts and the buildable lands review cycle. The population forecasts are based on the census data available early each decade. The buildable lands review and evaluation program is on a five-year cycle, beginning in 2002 and every five years thereafter, to assess actual development trends in a county and its cities. RCW 36.70A.215(2)(b). This leads

---

[33] The GMA deadline for adopting Plans, including final UGAs, was July 1, 1994. Ten years later is July 1, 2004. The 2002 amendments arguably added 6 months to this review since December 1, 2004 is the new deadline.

[34] Laws of 2003, ch. 299; Laws of 2004, ch. 206; Laws of 2005, ch. 423.

[35] As the Board stated in *Bremerton II*, Order on Reconsideration (Sept. 16, 2004), at 8: "The Board reads RCW 36.70A.130 to require that on or before December 1, 2004 (.130(4)(a)), Kitsap County's planning cycle must be brought into the GMA sequence, using OFM's most recent ten-year population forecast, (.130(1)(a)), evaluating its UGA boundaries and densities (.130(3)), and applying BLR findings to its UGA decisions (.130(3) and .215)."

logically into an assessment of the appropriate sizing of the Urban Growth Area. Urban Growth Area review "may be combined with" the buildable lands review. RCW 36.70A.130(3).

The Board finds and concludes that Kitsap County was required to review its Urban Growth Areas, pursuant to RCW 36.70A.130(3), within ten years after 1994, the statutory deadline for adopting its Plan and UGAs. Kitsap acknowledges that it has not conducted the UGA analysis and disputes the deadline. The Board finds that Kitsap County has **failed to act** to review its UGAs. The Board finds and concludes that Kitsap County **has not complied** with RCW 36.70A.130(3).

Findings of Fact and Conclusions of Law

The Board finds and concludes:

1. In the course of almost-annual amendments to the GMA, there has been no change in the timetable for UGA reviews. Central Puget Sound counties and cities were required to adopt their county-wide planning policies, comprehensive plans, and development regulations and establish their urban growth areas by July 1994 and review their UGAs comprehensively "at least every ten years" thereafter.

2. RCW 36.70A.130(3) required Kitsap County to "review, at least every ten years, its designated urban growth area or areas and the densities permitted within both the incorporated and unincorporated portions of each urban growth area" and to revise its designation of urban growth areas and permitted densities "to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period."

3. Kitsap County's urban growth areas were initially required to be adopted on July 1, 1994, pursuant to RCW 36.70A.110(5) and RCW 36.70A.040(3); therefore the review of urban growth areas mandated by RCW 36.70A.130(3) was to have been completed by Kitsap County by no later than December 1, 2004.

4. The legislature has amended GMA deadlines from time to time, allowing CTED to grant specific extensions, in recognition of the complexity of analysis and public process that may be involved, but there has been no such statutory extension or authority granted to CTED concerning the required UGA review.

5. The Growth Management Act contains no provision allowing CTED to extend or adjust the UGA review deadlines established by RCW 36.70A.130(3).

6. Kitsap County acknowledges that it **did not** review its urban growth areas in 2004 and does not intend to conduct that review until 2008 or 2009. *See* Kitsap Response 6, at 4.

7. Therefore, given the statutory timeframe established in the GMA for UGA review, and Kitsap County's acknowledged non-action, the Board will enter a **Finding of Noncompliance – Failure to Act** [regarding Kitsap County's review of its urban growth areas as required by RCW 36.70A.130(3).

8. Kitsap County **failed to act** in reviewing its designated urban growth areas and the densities permitted within both the incorporated and unincorporated portion of each urban growth area, pursuant to RCW 36.70A.130(3); therefore, the Board will set forth a compliance schedule within which the County shall take the required action to review and revise, as necessary, its urban growth areas.

Conclusion

Kitsap County **has not complied** with RCW 36.70A.130(3) in that the County has **failed to act** to review its Urban Growth Areas within ten years of the statutory date for adoption of UGAs. The Board enters an **order of non-compliance**. Given the complexity of the review required, the Board extends the compliance schedule until June 30, 2006.

D. INVALIDITY

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18. Nevertheless, Petitioners pose Legal Issue No 4 as a request for Invalidity if the County is found noncompliant with any of the allegations made in the Petitioners' Legal Issues:

Legal Issue No. 4.

> *Does the County's adoption of Ordinance 326-2004 and Resolution 158-2004 and the County's failure to adopt reasonable measures per RCW 36.70A.215 substantially interfere with the goals of the GMA such that these actions should be held invalid by this Hearings Board?*

Applicable Law

RCW 36.70A.302 provides:

> (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
>
> (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
>
> (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

Findings of Fact and Conclusions of Law

In its discussion of Petitioners' Legal Issues 1, 2 and 3, *supra*, the Board found that these Petitioners had failed to carry their burden of proof and Legal Issues 1, 2 and 3 were **dismissed**. There was no finding of noncompliance and a remand. Therefore, the Board need not, and can not, consider Petitioners' request for invalidity.

V. ORDER

Based upon review of the Petitions for Review, the GMA and the legislative history of relevant portions of the GMA, prior Orders of this Board and the other Growth Management Hearings Boards, case law, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

- Petitioners have **not met their burden of proof** with respect to Legal Issue Nos. 1, 2, 3 and 4. **Legal Issue Nos. 1, 2, 3 and 4 are dismissed.**

- Kitsap County has **failed to act** to review and revise its designated urban growth areas and **has not complied** with the requirements of RCW 36.70A.130(3) regarding urban growth areas. Therefore, Kitsap County is directed to take the necessary legislative action to comply with the review and revision requirements of RCW 36.70A.130(3) for its urban growth areas according to the following compliance schedule:

- RCW 36.70A.300(3)b) allows the Board to extend the 180-day compliance schedule for a noncompliant jurisdiction if the Board determines that the case is one of unusual scope or complexity. **The Board finds that Kitsap County's UGA review will be a complex task**; therefore, Kitsap County shall adhere to the following "extended" compliance schedule:

    1. By no later than **June 30, 2006**, Kitsap County shall take appropriate legislative action to comply with the review and revision requirements of RCW 36.70A.130(3) for its urban growth area designations and permitted urban densities.

2. By no late than **July 14, 2006**, Kitsap County shall file with the Board an original and four copies of the legislative enactment(s) adopted by Kitsap County to comply with RCW 36.70A.130(3) along with a statement of how the enactments comply with RCW 36.70A.130 (**compliance statement**). The County shall simultaneously serve a copy of the legislative enactment(s) and compliance statement on Petitioner Harless.

3. By no later than **July 28, 2006**, Petitioner Harless *may* file with the Board a Petitioner's Response to the County's compliance statement and the legislative enactments. Petitioner shall simultaneously serve a copy of such comment on the County.

4. Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. August 7, 2006** at the Board's offices. [The only matter at issue at this compliance proceeding will be whether Kitsap County enacted the required review and revision to its urban growth areas and permitted urban densities. The substance of those legislative designations and enactments will **not** be part of the compliance proceeding in this case – CPSGMHB Case No. 04-3-0031c, *1000 Friends/KCRP v. Kitsap County*. Any challenges to the substance of those enactments must be brought through a timely filed petition for review.]

If Kitsap County takes the required legislative action prior to the June 30, 2006 deadline set forth in this Order, the County may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 28th day of June 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____

Margaret A. Pageler
Board Member

_____

Edward G. McGuire, AICP
Board Member

_____

Bruce C. Laing, FAICP
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

APPENDIX – A

Chronological Procedural History of CPSGMHB Case No. 04-3-0031c

On December 28, 2004, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) with three exhibits from 1000 Friends of Washington[36] and Kitsap Citizens for Responsible Planning (**Petitioners** or **1000 Friends/KCRP**). The matter was assigned Case No. 04-3-0030, and is hereafter referred to as *1000 Friends/KCRP*. Board member Margaret Pageler is the Presiding Officer (**PO**) for this matter. Petitioners challenge Kitsap County's (**Respondent** or the **County**) adoption of Ordinance No. 326-2004 [amending the Comprehensive Plan] and Resolution No. 158-2004 [providing an addendum to the buildable lands analysis report] as noncompliant with various provisions of the Growth Management Act (**GMA** or **Act**).

On December 30, 2004, the Board received a PFR from Jerry Harless, (**Petitioner** or **Harless**). The matter was assigned Case No. 04-3-0031. Harless challenges the County's adoption of Ordinance No. 326-2004 [amending the Comprehensive Plan]. Harless also challenges the County's failure to act to adopt "reasonable measures" and to review and revise its UGAs. The basis for the challenge is noncompliance with various provisions of the GMA.

On January 4, 2005, the Board received Notices of Appearance in Case No. 04-3-0030 and -0031 on behalf of Kitsap County from Deputy Prosecuting Attorneys Shelley E. Kneip and Lisa J. Nickel, Deputy Prosecuting Attorneys in the Kitsap County Prosecuting Attorney's Office.

On January 5, 2005, the Board issued a Notice of Hearing and Potential Consolidation for 1000 Friends/KCRP and Harless III, setting a Prehearing Conference and a tentative case schedule.

On January 13, 2005, the Board received a Notice of Association of Simi Jain as co-counsel for 1000 Friends of Washington, requesting to be designated as the attorney for petitioners in Case No. 04-3-0030.

On January 28, 2005, the Board received the County's Preliminary Index to the Record.

On January 31, 2005, at 10:00 a.m., the Board conducted the Prehearing Conference at the Union Bank of California Building, 5th Floor Conference Room, 900 Fourth Avenue, Seattle. Board member Margaret Pageler, Presiding Officer in this matter, conducted the conference, with Board members Bruce Laing and Ed McGuire in attendance. Petitioners 1000 Friends of Washington and KCRP were represented by attorneys John Zilavy and Simi Jain. Tom Donnelly of KCRP also attended. Petitioner Jerry Harless was present *pro se*. Kitsap County was represented by its attorneys Shelley Kneip and Lisa Nickel and by County Planner Angie Silva. Attorney Lawrence A. Costich, Graham & Dunn, attended on behalf of potential intervenors.

[36] 1000 Friends of Washington has changed its name to Futurewise.

At the Prehearing Conference, the Board indicated to the parties its intention to consolidate the cases pursuant to RCW 36.70A.290(5). The parties concurred. The Board discussed with the parties the possibility of settling or mediating their dispute to eliminate or narrow the issues. The Board reviewed its procedures for the hearing, including the composition and filing of the Index to the record below; exhibits, core documents, and supplemental exhibits; dispositive motions; the Legal Issues to be decided; and a Final Schedule.

On February 1, 2005, the Board issued a Prehearing Order and Order of Consolidation consolidating the PFRs as **CPSGMHB Consolidated Case No. 04-3-0031c**, hereafter referred to as *1000 Friends/KCRP v. Kitsap County*. The Prehearing Order (**PHO**) set forth the legal issues to be decided as Legal Issues 1-4, submitted in the 1000 Friends/KCRP PFR, and Legal Issues 5-8, submitted in the Harless PFR.

On February 15, 2005, the Board received Petitioner Harless' Motion to Supplement the Record, with nine attachments.

On February 17, 2005, the Board received Kitsap County's Core Documents, as follows:

Kitsap County Comprehensive Plan, Index 26832
Resolution No. 158-2004, Index 27441
Provisions of Zoning Code referenced in Resolution 158-2004 [N/A]
Ordinance No. 326-2004 amending Comp Plan and Zoning Map, Index 27334
Population Appendix to Kitsap County Comp Plan, Index 20539
Buildable Lands Analysis, Index 23627
Ordinance No. 327-2004 amending County-Wide Planning Policy [N/A]
Ordinance No. 311-2003 amending Comp Plan and Map for 2003, Index 25559

On February 17, 2005, the Board received a Motion to Appear as Amicus Curiae from Overton & Associates, Alpine Evergreen Company, Inc., and Olympic Property Group.

On February 17, 2005, the Board received "Kitsap County's Motion to Dismiss Legal Issues 5, 7 and 8", accompanied by an Affidavit of Publication affirming the publication of notice of adoption of Ordinance 326-2004 on October 30, 2004. Legal Issues 5, 7 and 8, submitted in the Harless PFR, challenge Ordinance 326-2004. Kitsap's Motion to Dismiss was based on the untimely filing of the Harless PFR, which was filed December 30, 2004, on the 61st day after publication.

On February 24, 2005, the Board issued its Order to Supplement the Record, requiring Kitsap County to submit an affidavit of publication of Resolution No. 158-2004.

On February 28, 2005, the Board received Kitsap County's Response to Petitioner Harless' Motion to Supplement the Record, with seven attachments.

On March 7, 2005, the Board received Petitioner Harless' Rebuttal of Kitsap County's Response to His Motion to Supplement the Record.

On March 7, 2005, the Board received Respondent's Response to Board's Order to Supplement the Record, indicating that notice of adoption of Resolution 158-2004 was not separately published, but the resolution was incorporated by reference in the notice of adoption of Ordinance 326-2004.

Petitioner Harless submitted no response to Kitsap County's Motion to Dismiss.

On March 15, 2005, the Board issued its Order on Motions, Dismissing Harless Petition, Ruling on Supplementation and Granting Amicus (**Order on Motions**). The Order on Motions granted Kitsap County's Motion to Dismiss Harless Legal Issues 5, 7 and 8 as untimely. The Order further dismissed Legal Issue 6 on the ground that, though posited as a "failure to act" challenge, Legal Issue 6 in fact asserts the non-compliance of various County actions with GMA requirements, and as to those actions, the challenge is untimely or otherwise barred.

On March 21, 2005, the Board received Petitioner Harless' Request for Reconsideration and Motion to Intervene, requesting reconsideration of the Board's order dismissing Legal Issue 6 and, alternatively, requesting status as an intervenor with regard to Legal Issues 2, 3 and 4 as petitioned by 1000 Friends/KCRP.

On March 21, 2005, the Board issued its Order Granting Intervention and Shortening Time to Respond to Motion for Reconsideration.

On March 28, 2005, the Board received Kitsap County's Response to Harless Motion for Reconsideration.

On March 31, 2005, the Board issued its Order on Reconsideration, reinstating Harless's PFR as to Legal Issue No. 6 and revising the briefing schedule for that issue.

On April 4, 2005, the Board received Futurewise's and Kitsap Citizens for Responsible Planning's Prehearing Brief with nine attachments and Intervenor Harless' Prehearing Brief [Legal Issues 2, 3 and 4] with one attachment. On April 11, 2005, the Board received Petitioner Harless' Prehearing Brief of Legal Issue No.6 with one attachment.

On April 5, 2005, the Board received a Motion to Intervene by Richard Bjarnson and a Notice of Appearance from William H. Broughton of Broughton & Singleton, Inc., P.S. The proposed intervention is in support of Respondent Kitsap County and is limited to Legal Issue No. 1. The Board received no response to the Motion to Intervene.

On April 12, 2005, the Board issued its Order on Intervention granting the Bjarnson motion.

On April 18, 2005, the Board received Respondent's Prehearing Brief with the Declaration of David W. Nash and eleven exhibits. On that same day the Board received Respondent [Intervenor] Bjarnson's Prehearing Brief and the Prehearing Brief of Amici Curiae Overton, et al., with eleven exhibits.

On April 22, 2005, the Board received Kitsap County's Prehearing Brief Concerning Issue No. 6.

On April 22, 2005, the Board received Intervenor Harless' Reply Brief of Issues 2, 3 and 4 electronically, with hard copy received by mail on April 25.

On April 25, 2005, the Board received Futurewise and KCRP's Prehearing Reply Brief electronically, with hard copy and one attached exhibit received by mail on April 26.

On April 27, 2005, the Board received Intervenor [sic] Harless' Reply Brief Regarding Issue 6 with one attachment.

On May 2, 2005, the Board held the Hearing on the Merits (**HOM**) in the conference room adjacent to the Board's Offices, Suite 2470, 900 Fourth Avenue, in Seattle. Board member Margaret Pageler presided, with board members Bruce Laing and Ed McGuire also in attendance. The hearing began at approximately 10:00 a.m. and adjourned at 12:15. Petitioners Futurewise and Kitsap Citizens for Responsible Planning were represented by John Zilavy, accompanied by co-counsel Simi Jain, and KCRP members Charlie Burrow and Tom Donnelly. Petitioner-Intervenor Jerry Harless appeared *pro se.*Respondent Kitsap County was represented by Kitsap County Deputy Prosecutor Shelley Kneip, accompanied by Lisa Nickel and Angie Silva. Intervenor Bjarnson was represented by Bill Broughton and *Amici Curiae* Overton, et al., were represented by Elaine Spencer. Katie A. Askew of Byers & Anderson, Inc. provided court reporting services. The Board subsequently ordered a transcript of the HOM.

At the outset of the HOM, the Presiding Officer indicated that Board would defer to the written decision and order (FDO) its rulings as to admission of exhibits submitted with the briefs that were not previously identified as part of the record or by Motion to Supplement the Record. In the course of the HOM both parties made use of an enlarged colored copy of Map 2, Index No. 24122, which Respondent supplied for illustrative purposes.

On May 4, 2005, the Board received, by memorandum from Shelley Kneip, Kitsap County's response to a question posed by the Board at the HOM regarding the zoning requirements for park and ride lots.

On May 13, 2005, the Board received Kitsap County's Statement of Additional Authority with an attached copy of the Supreme Court's decision in *Quadrant Corp. v. CPSGMHB*, ___ Wn2d ___, 110 P.3d 1132, 2005 WL 1037145 (May 5, 2005). On May 16, 2005, the Board received Harless' Response to County Statement of Additional Authority.

The Board received the transcript of the hearing on the merits electronically on May 24 and in paper copy with certifying pages on June 8, 2005.

The Board's Final Decision and Order was issued on June 28, 2005.

APPENDIX - B

Reasonable Measures

Kitsap County Staff Report – July 12, 2004 – with Planning Commission recommendations to the Board of County Commissioners – *Index 27143, at 14-25*

1. Ease development standard restrictions for Accessory Dwelling Units (ADUs) in single family zones in the UGA.

2. Provide multifamily housing tax credits (or other types of real estate tax abatement) to developers in the UGA.

3. Provide density bonuses to developers in the UGA.

4. Transfer/purchase of Development rights (TDRs) between rural lands and the UGA.

5. Allow clustered residential development in the UGA.

6. Allow limited-equity housing such as co-housing and community land trusts in the UGA.

7. Allow duplexes, town homes and condominiums in single-family zones in the UGA.

8. Increase allowable residential densities in the UGA.

9. Institute maximum lot sizes in the UGA.

10. Institute minimum residential densities in the UGA.

11. Reduce residential street width standards in the UGA.

12. Selectively implement small residential lots in the UGA.

13. Implement inclusionary zoning ordinances for new housing development in the UGA.

14. Plan and zone for affordable and manufactured housing development.

15. Zone areas by building type, not by use.

16. Develop a local brownfields program in the UGA.

17. Encourage the development of urban centers and urban villages.

18. Encourage mixed uses.

19. Encourage transit-oriented development.

20. Implement a master-plan permit requirement for large parcel development in the UGA.

21. Interim development standards.

22. Encourage transportation-efficient land use.

23. Urban growth management agreements between jurisdictions.

24. Work with KRCC (Kitsap Regional Coordinating Council) to create annexation plans for UGAs.

25. Encourage developers to reduce off-street surface parking.

26. Implement a program to identify, rezone, and redevelop vacant and abandoned buildings.

27. Concentrate critical services near homes, jobs, and transit.

28. Locate civic buildings in existing communities rather than in greenfield areas.

29. Implement a process to expedite plan and permit approval for dense development.

30. Implement design review programs for land within the UGA.

31. Urban amenities for increased densities.

32. Targeted capital facilities investments.

33. Environmental review and mitigation built into the sub-area planning process.

34. Enhance flexibility in Limited Areas of More Intense Rural Development (LAMIRDs).

35. Mitigation banking.